(16)

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 172/2006

APPLICANTS	Lakhabir Singh, S/o Balbir Singh, aged about 40 years, occupation service, r/o Bishrampur, P.S. Bishrampur, Tahsil Surajpur, Distt. Surguja (C.G).

Versus

NON-APPLICANTS	State of Chhattisgah, through the District Magistrate, Surguja Ambikapur, Distt. Surguja (C.G).

PETITION U/S 482 OF THE CODE OF CRIMINAL PROCEDURE

Appearance:

Shri Bhupendra Singh, counsel for the applicant.

Shri Sandeep Yadav, Dy.Govt. Advocate, for the State.

ORAL ORDER
(20.06.2007)

SUNIL KUMAR SINHA, J,

(1) Heard finally with the consent of the parties.

(2) This petition is directed against the order dated 16.10.2006 passed in Criminal Revision No.236/2006, by the First Addl. Sessions Judge, Surguja whereby the said Court while dismissing the aforesaid revision maintained the order passed by the Magistrate on 03.10.2006 in Criminal Case No.295/2006 (State –vs- Ezaz and others).

(3) A perusal of the order would show that a Mobile Set of Motorola Company (Model L7) bearing No.358391000561403 was seized during the course of investigation of Crime No.67/2006 registered at Police Station Batauli u/ss 395, 397, 212 & 216 of I.P.C. It was seized from the possession of one Nitu Singh @ Ravindra Singh who is one of the accused persons. The petitioner, who is the brother accused Nitu Singh, claimed to

be the owner of the said Mobile Set and filed an application for releasing of the said set in his favour u/s 451 Cr.P.C. before the Magistrate. The Magistrate rejected his application, therefore, he filed a criminal revision and when the criminal revision was also dismissed by the impugned order dated 16.10.2006 this Criminal Misc. Petition has been filed.

(4) Learned counsel for the petitioner argues that it comes in the rejection order that this Mobile Set may be required during the course of evidence, therefore, the Courts below have refused to give it to the petitioner. It has also been observed by the Sessions Court that it was seized from the possession of Nitu Singh @ Ravindra Singh and there was no evidence before that Court that the present applicant was brother of Nitu Singh and on these grounds the petition was rejected. He prays for releasing the said Mobile set in favour of the petitioner. He refers to the document Annexure P-2 which is the cash memo. It shows that the petitioner has purchased that Mobile from a particular shop. This prayer is opposed by counsel for the State who is present alongwith the case diary.

(5) I have heard learned counsel for the parties at length and have also perused the records of the Misc. Petition as also the contents of the case diary.

(6) Section 451 Cr.P.C. empowers the Court to pass appropriate orders with regard to property of a criminal trial. This provides that the orders should be passed by the concerned Court for the proper custody pending conclusion of the enquiry or trial; or to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary; and if the property is subject to the speedy and natural decay, to dispose of the same. This power should be exercised expeditiously and judiciously, as a quick action will not render the owner of the article to suffer because of its remaining unused or in some cases by its misappropriation and the Court or the Police would also not be required to keep the article in safe custody till the

disposal of the trial and if the property is a vehicle (though it is not in this case), the quick disposal is necessitated because it is of no use to keep such seized vehicle at the Police station for a long period as ultimately the long detention would render into a junk and the machinery as well as body parts would be of no use for nobody.

(7) In the present case, admittedly the property seized is an electronic device and if it is kept in an idle condition either in the police station or in the *Nazarat* of the Court, it may render useless by mechanical disorder due to unsafe keeping which most often happens in such custodies. The petitioner has filed two affidavits sworn by Lakhubir Singh and Nitu Singh, in which they have expressed that if the aforesaid Mobile set is given to the custody of the petitioner, they have no objection.

(8) In view of the above, it is directed that the seized Mobile set shall be handed over to the interim custody of the petitioner on the following conditions:

(i) He shall execute a *Suprudnama* to the tune of Rs.5000/-

(ii) He shall not alienate or transfer the property to anybody else till disposal of the trial.

(iii) He shall not create any third party interest on the property.

(iv) He shall produce the property as and when directed by the Court during the course of trial;

(v) He shall produce a solvent surety to the tune of Rs.5000/- ensuring compliance of the conditions of the *Suprudnama* executed by the petitioner.

The impugned orders passed by the two courts below are set aside. The petition stands allowed on the aforesaid conditions.

C.c. as per rules.

Sd/-
Sunil Kumar Sinha
Judge

Rao